

STATE OF MICHIGAN
COURT OF APPEALS

DAVID MICHAEL THAMM, JR.,

Plaintiff-Appellant,

v

HOLLI CRUM,

Defendant-Appellee.

UNPUBLISHED
December 6, 2005

No. 255483
Genesee Circuit Court
LC No. 03-245770-DP

Before: Talbot, P.J., and White and Wilder, JJ.

WHITE, J. (*concurring*).

After agreeing to a paternity test, which established plaintiff as the father, and a psychological evaluation of plaintiff, plaintiff and defendant reached an agreement regarding paternity, visitation and custody. The agreement was placed on the record and documents were prepared incorporating the agreement and the court's decision on the few items that were left to its discretion. It was clear at the time of the agreement that defendant was married to another man.

There is no question that the court had subject-matter jurisdiction of the paternity action. The standing issue involves the interpretation of the Paternity Act, not the constitutional requirement that there be a case or controversy. Clearly an actual controversy was involved and plaintiff had a direct interest in the outcome.

Defendant could have raised the standing issue as a defense at any time before entering the agreement, but apparently chose not to do so. Instead, she entered into an agreement on the record, enforceable under MCR 2.507(H).

The only ground asserted in support of defendant's motion to set aside the agreement was that defense counsel mistakenly believed that defendant was seeking a divorce, and that in the absence of such a proceeding, plaintiff lacked standing. However, plaintiff's lack of standing was apparent without regard to whether defendant was seeking or would ultimately seek a divorce, and defendant clearly had knowledge of her own intent. Further, there was no indication at the time of the agreement that it was contingent on defendant's obtaining a divorce, or that such a proceeding was even contemplated.

Nevertheless, I am constrained to concur with the majority opinion. In *Kaiser v Schreiber*, 258 Mich App 357; 670 NW2d 697 (2003), a panel of this Court reversed a trial

court's grant of summary disposition to defendant mother in a similar situation, involving a claim under the Child Custody Act, MCL 722.21 *et seq.*, for reasons comparable to those discussed above. The Supreme Court reversed, *Kaiser v Schreiber*, 469 Mich 944; 670 NW2d 671 (2003), finding dispositive that "[p]laintiff did not have standing under the Child Custody Act, MCL 722.21 *et seq.*, and would not have standing under the Paternity Act, MCL 722.711 *et seq.*, to seek custody of and visitation rights with a child whose mother was married at the time of the child's conception and birth." *Id.* I am unable to distinguish *Kaiser*, and therefore concur.

/s/ Helene N. White